Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Revision of the Commission's Rules	)	CC Docket 94-102
To Ensure Compatibility with	)	
Enhanced 911 Emergency	)	
Calling Systems	)	

AMERICAN SAMOA LICENSE, INC. REQUEST FOR WAIVER OF THE E911 PHASE II RULES

American Samoa License, Inc.

Richard Cohen
General Counsel
American Samoa License, Inc.
6120 Windward Parkway
Suite 290
Alpharetta, GA 30005
(678) 366-0104

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SUMMARY

During the last three years as American Samoa Licensee, Inc ("ASLI") constructed and began operations of the first PCS system in the US Territory of American Samoa, ASLI has had to deal with a variety of unique challenges. Simply put, bringing PCS service to a series of islands located over 4,000 miles from the US Mainland has tested ASLI's capabilities and resolve. Now ASLI is attempting to provide E911 Phase II service when confronted with:

*A PSAP whose Commissioner has resigned and has only recently been replaced;

*A PSAP whose former Commissioner was uncertain when the PSTN would be able to support Phase II and when the PSAP would have the necessary funding;

*A market in which Phase II service will not be provided for at least three years due to the inchoate nature of the PSAP's plans, the absence of funding to make the PSAP Phase II compliant, and the PSTN's inability to support Phase II without substantial network modifications; and

*An Island infrastructure lacking many of the common conventions found on the US Mainland, such as street names and addresses.

ASLI is a GSM based carrier that plans to provide E911 Phase II via a handset based solution. It desires to provide the islands with Phase II service but is pragmatic enough to realize that unless it requests a narrowly focused waiver of Section 20.18(g)(1) it will be required to sell, and its subscribers will be required to buy, handsets with an ALI capability that the subscriber will not be able to utilize during the life of the handset. This will have one of two consequences that are antithetical to the public interest. First, if ASLI passes through the additional cost of ALI capable handsets to its subscribers,

American Samoans (whose average income is significantly below residents of the US Mainland) will have to pay for a capability they will not be able to use. In the alternative, if ASLI subsidizes the additional cost, it would siphon away dollars from ASLI's construction budget, thereby delaying ASLI's plans to provide first time service and new service offerings to the islands.

Under either scenario, the public interest will be adversely affected without furthering any countervailing public interest. E911 Phase II service will not be brought to American Samoa one moment sooner by ASLI selling ALI capable handsets when E911 Phase II will not be available for at least three years. By that time, ASLI believes that ALI capability will be a standard feature on handsets and thus by the time Phase II service is offered in American Samoa, a significant percentage of ALI capable handsets will be in the chain of distribution and in the hands of American Samoans.

ASLI will continue to pursue the goal of bringing E911 Phase II to American Samoa but it is powerless to do so until the PSAP begins to take the lead in developing concrete Phase II plans and the PSTN is overhauled so that it can handle Phase II traffic.

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TO: Wireless Telecommunications Bureau

AMERICAN SAMOA LICENSE, INC.
REQUEST FOR WAIVER OF THE E911 PHASE II RULES

INTRODUCTION

American Samoa License, Inc. ("ASLI") is a FCC licensed PCS system carrier which has been providing wireless service to the U.S. citizens of the island of American Samoa since July 10, 1999. ASLI's system utilizes Global System for Mobile Communications ("GSM") technology to provide service. American Samoa is a small island 4,150 miles from the U.S. mainland, which as a United States Territory, is given the same status under the Communications Act as a U.S. state.[1] ASLI hereby requests a waiver of Section 20.18(g)(1) which establishes a schedule by which each wireless licensee employing handset based location technology must introduce ALI capable handsets to its subscribers by October 1, 2001.[2]

Due to a combination of unique circumstances, including the technical limitations of American Samoa's Public Switched Telephone Network ("PSTN"), the current status of 911 service in American Samoa, and the absence of plans by the PSAP to fund or implement

[1] 47 U.S.C. § 153(40) (2000).
[2] This waiver of 47 C.F.R. § 20.18(g)(1) is requested pursuant to 47 C.F.R. § 1.3.

Enhanced 911("E911") service, ASLI does not believe it: a) will be able to meet the October 1, 2001 deadline to begin selling and activating ALI capable GSM handsets and; b) should be required to achieve the other deadlines contained in Section 20.18(g)(1). ASLI has been informed by American Samoa authorities that the sole Public Safety Answering Point ("PSAP") in American Samoa will be unable to request any type of Enhanced 911 ("E911") service until such time as monies are allocated for the PSAP's provision of E911 service. According to the PSAP, it has no idea when this will occur or when an E911 request will be made. Rather than drain ASLI's construction budget to provide an E911 capability which will not be requested or utilized for years to come, ASLI believes that the money would be better spent providing wireless service to additional areas of American Samoa and increasing the capacity of the system. A grant of the requested waiver will not dim ASLI's commitment to provide E911 service to American Samoans. To the contrary, ASLI shall *continue* to play a pro-active role in bringing E911 to American Samoa and to provide the FCC with quarterly updates detailing the status of the PSTN and the PSAP's efforts.

I. E911 PHASE II REQUIREMENTS

The FCC's Phase II requirements are as well known, as they are challenging, to wireless carriers. The FCC requires wireless carriers to deploy Phase II Enhanced 911 ("Phase II") upon a valid request made by the designated PSAP.[3] In addition, the FCC expects wireless carriers to meet its "Phase II accuracy" standards.[4] Further, under the FCC's rules, a wireless carrier that opts for a handset solution must comply with Section 20.18(g)(1). Based on ASLI's review of

[3] The "designated PSAP" is defined as the PSAP designated by the local or state entity that has the authority and responsibility to designate the PSAP to receive wireless 911 calls. 47 C.F.R. § 20.3.

[4] See 47 C.F.R. § 20.18(h).

current technology, GSM carriers have little choice but to utilize a handset solution if they must comply with the October 1, 2001 deadline.

Once the decision to utilize a handset solution is made, a carrier must, absent a waiver, comply with Section 20.18(g)(1). That rule established a schedule which contains benchmark dates by which carriers utilizing a handset based technology must sell a sufficient number of ALI capable handsets so that ALI capable handsets account for prescribed percentages of new handset activations.[5]

As will be discussed at length in Section III below, ASLI has not received a request for either Phase I or Phase II E911 service. ASLI has learned that the sole PSAP in its market is not currently able to meet these prerequisites due to a lack of funding and the inability of the PSTN to support E911. Thus, due to the absence of a foreseeable valid PSAP request, the inability for the PSTN to provide E911 due to its current configuration, and the initial unavailability of ALI capable handsets in American Samoa, ASLI hereby requests a waiver of Section 20.18(g)(1).[6]

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[5] See 47 C.F.R § 20.18(g)(1).

[6] It is doubly unfortunate, that the rules require ASLI to decide which technology it will employ years before Phase II service will arrive on American Samoa. First, by being required to select a technology now, ASLI is compelled by the lack of an alternative to choose a handset solution, and that very choice compels ASLI to file this waiver request. Second, if ASLI was not required to 'declare' its choice at this time, it is quite feasible that a network based GSM solution could emerge in time for it to be utilized by ASLI. While the FCC may permit a carrier to change its choice of technologies, ASLI's decision to utilize a handset solution will drive its purchases of software and hardware that could be incompatible or worthless if ASLI switched to a network based solution. Thus, once ASLI decides to utilize the handset based solution, ASLI will be economically motivated to make that decision a permanent one.

II. ASLI REQUESTS WAIVER OF SECTION 20.18 (g)(1)

A. Legal Standard For Waivers

Generally, the Commission's rules may be waived when there is good cause shown and when "special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest."[7] The Commission has suggested that there may be instances in which "technology-related issues" or "exceptional circumstances" make it impossible for a wireless carrier to deploy Phase II by October 1, 2001, and individual waivers could be granted in these circumstances.[8] According to the Commission a request for a waiver of the Phase II rules should be "specific, focused and limited in scope, and with a clear path to full compliance."[9] As demonstrated below, ASLI's request satisfies these standards.

B. ASLI Is Narrowly Focusing Its Waiver

ASLI is deliberately presenting a waiver request which is specific, focused and limited in scope. The scope of ASLI's waiver request has been narrowed to encompass only Section 20.18(g)(1). It should be pointed out that ASLI's waiver request is far narrower in scope than other waivers currently before the Commission. Unlike other waivers which have been filed, it is unnecessary for ASLI to request a waiver of any other portions of Section 20.18 as: a) compliance with these subsections is not mandated until a valid PSAP request is received; and b) the PSAP in American Samoa is unable to make a valid request for the foreseeable future due to

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[7] *Fourth Memorandum Opinion and Order*, FCC00-326 at 43 (2000) (citing Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir 1990) and WAIT RADIO v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969)). ASLI notes however that the grant of a waiver in this instance would render this issue moot.

[8] Id. at ¶ 43.

[9] Id. at ¶ 44.

the current limitations of the PSTN, and the absence of funding necessary to upgrade the PSTN's and the PSAP's facilities, *See* §20.18(g)(2)[10/].

III. AMERICAN SAMOA POSES UNIQUE CHALLENGES TO THE IMPLEMENTATION OF E911

A. American Samoa Is In The Midst of Developing And Building Its Infrastructure

American Samoa is a U.S. Territory in the South Pacific, approximately 4,150 miles from San Francisco. Although there are six islands in American Samoa, only four (Aunu'u, Ofu, Ta'u, and Tutuila) are habitable with a total population of 64,000.[11] Currently, ASLI provides service to Aunu'u and Tutuila. Although Tutuila is the main island, it has a land mass of barely 72 square miles. In comparison, the smallest state on the U.S. Mainland, Rhode Island, dwarfs American Samoa in terms of size and population.[12] As discussed in detail below, ASLI will face numerous, large challenges in providing Phase II service to this small U.S. Territory.

American Samoa's infrastructure is still under construction. Common conventions, such as street names and addresses, do not exist. Unlike many States, American Samoa still provides many of its governmental services from a centralized location. Mail is not delivered to businesses or residents, instead every American Samoan must travel to the same central office

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[10/] Even with the recent elongation of vendor's due date, in American Samoa the PSAPs inability to fund and construct its Phase II capability will extend beyond the unavailability of PCS carriers' Phase II equipment. Ericcson, Inc.'s letter of July 2, 2001 attached to Voice Stream's Ex Parte (CC-Docket No. 94-102) of July 6, 2001 estimates that a complete EOTD rollout will not occur until Q2 2002. Nortel's Networks' letter of June 1, 2001, which is also attached to Voice Stream's Ex Parte Presentation, also gives a General Availability ("GA") date of Q2 2002 for its network improvements. Because of American Samoa it is a relatively small market, we anticipate that the "trickle down" effect would delay the actual date for EOTD rollout in American Samoa by an additional nine months, until Q4 2002. Even so, this equipment would arrive on American Samoa's shores long before the PSAP would be Phase II capable. ASLI estimates that it will be Q2 2004 before the PSAP in American Samoa has obtained the requisite funding for and constructed facilities necessary to be, Phase II capable.

[11/] *See* http://www.census.gov.

[12/] Rhode Island encompasses 1,214 square miles and has a population of over one million people. *See* http://www.encyclopedia.com.

and pick up mail.[13] The status of the postal system in American Samoa is just one example of how governmental services are still in nascent form when compared to the Mainland. Thus, it is unfair to hold American Samoa to the same standards as states which have far more developed and sophisticated infrastructure.

B. Currently American Samoans Have Access To A Nascent 911 Service

Instead of the standard of 911 service U.S. Mainland telephone subscribers have become accustomed to, American Samoans utilizing landline telephones must choose to either dial 911 and have their calls routed to the Police Dispatcher in Fagatogo, who will then contact the appropriate emergency police, fire, medical or other personnel, or they must directly dial (via a seven-digit telephone number) a particular emergency service provider. While on the U.S. Mainland, telephone companies routinely provide PSAPs with the address of the 911 caller, that is simply impossible on American Samoa, as in America Samoa streets are unnamed and addresses do not exist. Concerned over the state of 911 service on American Samoa and the impact it would have on the provision of E911 service, ASLI has filed comments with the FCC highlighting these issues.[14]

[13] Efforts are being made to try to localize the postal pick-up process by putting boxes across the Island closer to resident's homes where mail can be picked-up.

[14] See comments filed by ASLI in response to the Federal Communications Commission's *Notice of Proposed Rulemaking*, FCC 00-327 (rel. Aug. 29, 2000) ("Notice") seeking comment on the furtherance of emergency communications services, including wireless communications. A copy of ASLI's comments is attached as Attachment IV.

C. The Technical Limitations Of The PSTN Form A Substantial Barrier To The Provision Of E911 Service

The landline telephone network in American Samoa is owned by the American Samoa Telecommunications Authority ("ASTCA").[15] The network consists of multiple analog switches with digital retrofits, a digital access tandem (which is also used as an interexchange carrier gateway), multiple remote switching points, R-2/SS7 signaling, a 'backbone' network of analog microwave facilities and copper cables which are only voice capable. Fiber optic facilities are currently in very limited use.

The PSTN can best be described as capable of providing basic voice and very limited data capability. ASTCA does not provide SS7 signaling throughout the main island of Tutuila. Although SS7 signaling is not an absolute pre-requisite for E911 Phase II service, without it the PSTN would have to be significantly reconfigured in order to support Phase II service. For example, CLI and ANI information would have to be programmed into each of ASTCA's six switches. Further, R1-R2/ SS7 conversion switches would have to be purchased and installed by ASTCA and by American Samoa Telecomm, LLC so that CLI/ANI information might be exchanged without additional significant upgrades to the PSTN. Even with this conversion switch it is doubtful that ASTCA's aged analog switches could simultaneously handle both analog and digital signalling. Absent a second wave of substantial network modification, the PSTN will continue to be unable to support Phase II. Sadly, as will be discussed in Subsection D below, even if the PSTN were to undertake the Herculean task of modifying its network in order

[15] The landline telephone network is significantly different from the U.S. Mainland's PSTN. For example, equal access is not provided and calls to American Samoa from the U.S. Mainland must be preceded with a "011" code as though American Samoan was a foreign country. Both of these conditions are traceable, in part, to American Samoa not being a member of the North American Numbering Plan ("NANP"). We note that just recently, on March 23, 2001, American Samoa requested participation in the NANP.

to become Phase II compliant, the PSAP would be unable to handle Phase II traffic for years to come.

D. The Commissioner Of The Department Of Public Safety, American Samoa's Sole PSAP, Recently Painted A Pessimistic Picture Of E911's Future

Starting last year, ASLI initiated an exchange of letters with the Department of Public Safety ("the Department"), the sole PSAP on American Samoa, and received a pessimistic E911 forecast. (*See Attachments I, II, and III).* Not only is it American Samoa's only PSAP, the Department is the only American Samoan agency responsible for planning and implementing E911.

Unlike many PSAPs on the U.S. mainland, the Department does not have a advanced telephone infrastructure upon which to build. As discussed in Section III, B the islands' 911 service has not evolved to the level of 911 typically found elsewhere in the United States. Then Commissioner Fuavai noted that the PSAP currently uses the landline network. Given the PSAP's responses which are discussed below, it is fair to say that the PSAP has been concentrating its efforts on improving 911 service and has yet to meaningfully turn its attention to E911.

In response to ASLI's inquiries as to the dates that it could expect valid E911 Phase I and II requests, then Commissioner Fuavai candidly stated that "plans have not been made to go beyond our current landline network because sources of funding have not yet been identified." When asked key questions regarding when the transition will occur from Phase I to Phase II the Commissioner stated that because it is not clear when funds will be made available there are no concrete plans for either Phase I or Phase II. In sum, the PSAP on American Samoa simply does not know when it will be Phase I capable.

The Commissioner's letter also stated that in order to update the current 911 system and implement Phase I and Phase II, American Samoa would need to invest more than $250,000. The Commissioner assured ASLI that: "When funds are available, I'm not sure that ASLI or ASTCA will be[w] asked to implement these advancements."[16] Without concrete plans, without funding, and without a pending request for funding, E911's prospects for the foreseeable future on American Samoa appear dim.

E. The Bleak Outlook For E911 Became Bleaker With The Commissioner's Departure

Further complicating the timely provision of E911 in American Samoa is the fact that Commissioner Fauvai unexpectedly left office in the second quarter of 2001. Until recently the Commissioner's position remained unfilled, and American Samoa was left without a E911 'Czar' to direct the planning and implementation of E911.

The PSAP now has a new Commissioner at its helm, Commissioner Tuitele Leapaga Fue. ASLI has been unable to talk to the new Commissioner's Staff despite numerous attempts over the last few months. While ASLI is optimistic that the PSAP's E911 planning efforts will be invigorated by the new Commissioner's arrival, at present it appears that the unexpected departure of the former Commission further set back the PSAP's planning efforts.

To date the PSAP has not ventured a 'guesstimate' as to when a valid Phase II request would be forthcoming, ASLI has developed a 'best case' forecast. ASLI believes that a valid Phase II request will not be forthcoming for at least 3 years. It would take at least that long for: a) the PSAP to receive the necessary funding to support the enlargement of its facilities and

[16] *Letter to American Samoa License, Inc., from the Department of Public Safety, dated March 8, 2001.*

capabilities; b) the PSAP to build and integrate its new capabilities so that it could handle Phase II traffic flowing from and to the PSTN; and c) the PSTN to be overhauled and made Phase II capable. ASLI pledges to work with the new American Samoa 911 'Czar' and to help expedite this long and uncertain process.

IV. DUE TO ITS UNIQUE CIRCUMSTANCES, ASLI COULD NOT COMPLY WITH THE MANDATE OF SECTION 20.18(g)(1)

Absent a waiver, ASLI does not believe it would be able to reach the handset benchmarks contained in Section 20.18(g)(1) due to scarcity of ALI capable GSM handsets in smaller markets such as American Samoa. ASLI has been diligently working towards compliance with the E911 deadlines and addressed the possible need for a wavier with the Commission last year when it realized that it would be difficult to receive the requisite software from vendors in accordance with the FCC's deadlines. As ASLI reported to the FCC, in its *Report on E911 Phase II Implementation*, it takes a significant amount of time for software and hardware which are deemed GA to 'trickle down' to American Samoa.[17]

Based on ASLI's experience with CALEA compliant software, there is a nine month lag time between the date that a vendor declares it's product 'Generally Available' and the date that it arrives on the shores of American Samoa. According to ASLI's vendors, the initial supply of ALI capable GSM handsets will not be sufficient to overcome the nine month lag time. If this timetable remains accurate, ALI capable GSM handsets would have to have been 'Generally Available' by February in order to assure they would be in the hands of American Samoans starting October 1, 2001. Unfortunately, ASLI does not know of a single manufacturer or vendor that has stated, even as late as May 2001, that ALI capable GSM handsets are Generally Available.

[17] *See generally, American Samoa License, Inc's, Report on E911 Phase II Implementation,* filed November 9, 2000.

V. REQUIRING ASLI TO COMPLY WITH SECTION 20.18(g)(1) WILL NOT FURTHER THE PURPOSE OF THE RULE

A. Section 20.18(g)(1) Is Designed To Expedite The Ability Of Subscribers To Receive The Benefits Of E911 Phase II

By mandating a timetable for supplying subscribers with ALI capable handsets, the Commission is attempting to expedite the delivery of Phase II service to wireless subscribers. In the *Fourth Memorandum Opinion and Order*, the FCC set a date certain for the sale of ALI capable handsets in order to kick start the process of putting the handsets into the hands of wireless subscribers. [18] Thus, by aggressively scheduling the date for deployment of these handsets, the Commission felt it was maximizing the number of subscribers that could receive Phase II service when it is initially offered. [19]

B. Placing ALI Handsets Into ASLI's Subscribers' Hands In Accordance With The Timetable Of Section 20.18(g)(1) Will Not Expedite Provision Of Phase II Service To Its Subscriber.

1. Complying With The Timetable Will Not Expedite Provision Of Phase II Service

While the Commission's zeal to distribute ALI capable handsets is understandable in the context of a PSAP and a PSTN that are each capable of supporting Phase II, the rationale does not have the same force when applied to American Samoa. Unfortunately, if ASLI were to place ALI capable GSM handsets in all of its subscribers' hands, the effort would not expedite the delivery of Phase II service to ASLI's subscribers one bit. Until the PSAP is able to process Phase II calls that would be sent from ASLI, subscribers would not receive Phase II service.

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[18] *Fourth Memorandum Opinion and Order*, at ¶ 33.

[19] *Id.* at ¶ 3. See also FocuSystem Petition for Reconsideration, filed November 1, 2000, at 4.

Instead, their calls would continue to be treated as they are today, as basic 911 calls.[20] Thus, ASLI's request is readily distinguishable from the Petition for Reconsideration in which FocuSystems asked that Section 20.18(g)(1)'s deadlines be put off until a valid PSAP request was received. Unlike FocuSystems, ASLI is not seeking an industry-wide extension in the initial deployment of handsets based upon the absence of valid PSAP requests, rather it is seeking a *waiver*, limited to American Samoa, based upon the inability of both the PSAP and the PSTN to handle E911 traffic for the foreseeable future. Until such time as both can support E911, no wireless subscriber in American Samoa will benefit from possessing an ALI capable handset that cannot be used to provide Phase II service to its owner.

2. Without Imposition Of The Section 20.18(g)(1) Timetable Significant Numbers Of ASLI's Subscribers Will have ALI Capable Telephones When Phase II Service Is Finally Provided

As discussed in Section III, E infra., it will be at least three years before Phase II service is available on American Samoa. Based on ASLI's on-island experience, the average replacement rate for handsets is projected to be twenty four months. By the time that Phase II is available on American Samoa, ASLI will have been operating for five years which is the equivalent of two handset replacement cycles. Over the next few years many in the wireless industry expect that ALI-capability will become a standard feature in handsets.[21] Therefore, a significant number of American Samoans will acquire ALI capable handsets before Phase II arrives in American Samoa simply because with each subsequent replacement cycle ALI

[20] Currently, ASLI provides wireless callers with 911 dialing so that they can notify the PSAP of their need for emergency services. When ASLI receives a 911 call over its network, that call is translated into a seven-digit number and transmitted to the Police Dispatcher in Fagatogo.

[21] E911 compatible equipment manufacturers forsee ALI technology becoming a standard feature in the next generation of handsets. *See* International Wireless Communications Expo, *available at* http://www.dispatchmonthly.com/iwce/iwce2000.html (quoting John Cunningham, SnapTrack) Press Release (June 9, 2000) *available at* http://www.optotel.dk/pager/news/June_09_00-2.html.

capability will be a standard feature. Thus, it will not be necessary to impose a timetable to assure that a significant number of American Samoans will be able to utilize Phase II service on the first day that it becomes available on American Samoa.[22]

VI. THE APPLICATION OF SECTION 20.18(g)(1) TO AMERICAN SAMOA WOULD BE CONTRARY TO THE PUBLIC INTEREST

A. A Significant Cost Would Be Paid Either With Subscribers Paying For A Service They Will Not Receive For Years Or By ASLI Foregoing Additional Buildout In Order To Subsidize The Cost Of The Handsets

ASLI is gravely concerned that its subscribers would not be willing to pay an additional amount for ALI capability because Phase II service will not be available on island for years.[23] This would leave ASLI with two equally undesirable alternatives: 1) ASLI would either have to assess all subscribers a E911 charge in order to underwrite the additional cost of providing ALI capable handsets; or 2) ASLI would be faced with subsidizing the cost itself. If ASLI chose the former path, this additional cost would be spread among even more of its subscribers who would not receive the benefit for which they were being charged. On the other hand, if ASLI opted to self-fund the shortfall, it could only do so by draining its annual construction budget.

ASLI's annual construction budget allocates capital for: a) providing service to formerly unserved areas; b) increasing system capacity and reliability; and c) the purchase of software upgrades that will permit ASLI to provide new features and meet statutory compliance deadlines. ASLI would like to extend coverage to four or even six northern villages that currently do not

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[22] As discussed in VIII. C, ASLI will coordinate with the ASTCA and PSAP to ensure that significant numbers of ALI capable handsets will be in hands of its subscribers upon initiation of Phase II service.

[23] ASLI believes that American Samoans, who have an average annual income of only $16,114.00, will be reluctant to pay any additional cost for an ALI capability that they will not be able to utilize for at least three years. Since it is projected that subscribers will dispose of their 'old handsets' approximately every 24 months, the average ASLI subscriber would be purchasing a capability that it would never use. Further fueling ASLI's concern over customer reluctance is the projection by one handset vendor that its' ALI capable handset could cost as much as 350% more than the GSM PCS handsets that ASLI sells to its subscribers.

receive any coverage. In addition, ASLI currently has plans to provide additional capacity as some cells are near 'exhaust'. It is anticipated that future software upgrades will expedite the transition to 3G services and will make compliance with CALEA and Phase II possible. It is ironic that the real world benefits of providing first-time coverage to areas within American Samoa, increasing system capacity and reliability, and providing new services, would not materialize because the dollars earmarked for those efforts would be siphoned off to provide American Samoans with a 'capability' that they would be incapable of utilizing.

B. Imposing This Requirement On ASLI Is Inconsistent With The Commission's Espoused Desire For Its Phase II Rules To Be Technologically And Competitively Neutral

Regardless of how, or who, underwrites the additional cost of ALI capable GSM handsets, ASLI is concerned that the price disparity between more expensive GSM ALI handsets and the cheaper CDMA/TDMA ALI handsets may have an unintended anti-competitive effect. The net effect would be the unintentional favoring of one technology over another which is antithetical to the Commission's desire for its Phase II rules to be technologically and competitively neutral.[24] The Commission has previously stated that when a rule which appears neutral on its face in fact favors one technology over another the rule should be modified to preclude such an unintended effect.[25] Thus, ASLI respectfully submits that in order to preserve technical and competitive neutrality in the provision of wireless service in American Samoa, a waiver of 20.18(g)(1) is required.

[24] Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Third Report and Order*, 14 FCC Rcd at 17425. (1999).
[25] *Fourth Memorandum Opinion and Order*, at 40 (2000).

VII. WAIVING SECTION 20.18(g)(1) WILL NOT HARM THE PUBLIC INTEREST, IT WILL, IN FACT, BE IN THE PUBLIC INTEREST

The Commission's rules may be waived when there is good cause shown and when "special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest."[26] ASLI believes that the instant situation is exemplary of this standard. The average income of American Samoans is only $16,114, which does not allow for significant discretionary spending.[27] By not requiring ASLI subscribers to expend additional monies for an ALI handset capability that they will be unable to use for years and years, the Commission would allow American Samoans to retain a significant portion of their hard earned livelihood.[28] In addition, as discussed in Section VI. A, infra. ASLI will be able to meet its aggressive buildout schedule, providing service to new areas and increasing capacity in others, if it does not have to utilize the funds earmarked for system improvements to subsidize ALI capable handsets.

As demonstrated above, the application of Section 20.18(g)(1) to American Samoa's unique situation would be contrary to the public interest, whereas the waiver of Section 20.18(g)(1) would yield direct benefits to the inhabitants of American Samoa.

VIII. ASLI IS COMMITTED TO PROVIDING E911 SERVICE

A. ASLI Will Continue Its Efforts To Assist The PSAP In Provision Of E911

ASLI has a history of keen interest and involvement in E911. After surveying the state of 911 on the island, ASLI approached the Department to open up a dialogue concerning the future

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[26] *Id.* at 43.

[27] *See http://*www.census.gov. We also note that the U.S. minimum wage is not enforced in American Samoa. Thus, American Samoan workers are not receiving the same amount of income as their counterparts in the U.S.

[28] ASLI is optimistic that by the time that the PSAP is E911 Phase II capable, the prices of GSM ALI compatible handsets will have dipped significantly, due to economies of scale. If that were to happen, the Commission's waiver of Section 20.18(e) would not 'merely' delay a significant, unnecessary expenditure by American Samoans, it would obviate the need for the expenditure.

provision of E911 (*See Attachment I*). When no response was forthcoming, ASLI followed up with a series of on-island inquiries and sent the Department a second letter (*See Attachment II*). In fact, in its response of March 8, 2001 the Department thanked ASLI for its continued interest in E911.

ASLI's pledge to support the Commission's efforts, is a pledge by ASLI to *continue* to utilize its best efforts to facilitate the provision of E911 to American Samoans. Given the state of the PSTN, ASLI intends to include the landline provider, ASTCA, in discussions with the Department, as the future of E911 hinges on improvements being made to the PSTN.

B. ASLI Will Provide Regular Updates To The FCC

ASLI proposes that in conjunction with a Waiver of Section 20.18(g)(1) it will submit to the Commission detailed quarterly reports on the status of the implementation of both Phase I and Phase II E911 in American Samoa. ASLI will include in its updates the status of PSAP funding, the progress of the PSAP's capability to handle and process E911 calls, and a report on any E911 related improvements to the PSTN. ASLI will include in its reports any correspondence it has with the PSAP or ASTCA.

C. ASLI Will Begin To Sell ALI Capable Handsets Six Months Before The PSAP Makes A Valid Request

ASLI has not received a request for Phase II E911 service nor is that likely to occur in the foreseeable future. Although the FCC has pressed ASLI and other carriers to implement E911 services as early as is technologically feasible, E911 cannot become a reality in American Samoa until: a) the Territory budgets, constructs, and operates PSAP facilities capable of handling E911 calls, and b) the PSTN is modified so that it can handle E911 traffic. ASLI will request that the PSAP notify ASLI six months prior to its making a valid Phase II Request. ASLI will make a commitment to the Commission that upon receiving information from the PSAP that a valid

Request for Phase II will be made within six months, ASLI will begin to sell ALI capable handsets, if available.[29]

After ASLI begins to sell ALI capable handsets as agreed to above, ASLI will provide the FCC, on a quarterly basis, with reports which detail what percentage of new activations ALI capable handsets represent. This will afford the FCC the opportunity to gauge, on an ongoing basis, whether ALI capable handsets are rapidly being placed in subscribers hands. ASLI would cooperate with the FCC if the Commission determined that additional measures were necessary to speed the entrance of ALI capable handsets.

IX. CONCLUSION

Based upon the aforementioned, ASLI respectfully requests that the Commission consider its request for waiver of Section 20.18(g)(1) and find that the waiver is in the public interest. ASLI notes that it is precluded from providing E911 due to circumstances entirely beyond its control, as it is a function of the PSAP's and the PSTN's inability to process, transmit and accept E911 traffic. ASLI believes that by working in concert with the Department of Public

[29] ASLI believes that ALI capability will be a standard handset feature prior to the time that the PSAP notifies ASLI that it is six months away from making a valid request. See Section V.B.2 infra.

Safety and ASTCA, while simultaneously updating the Commission on its progress, ASLI can help ensure that E911 is rolled out as expeditiously and efficiently as possible on the island of American Samoa.

Respectfully submitted,

American Samoa License, Inc.

By: _____

Richard Cohen
General Counsel
6120 Windward Parkway
Suite 290
Alpharetta, GA 30005
(678) 366-0104

Its Attorney

July 30, 2001

ATTACHMENT I

Faafetai Daniel Langkilde
General Manager
American Samoa

Blue Sky
COMMUNICATIONS

October 24, 2000

Honorable Te'o J. Fuavai
Commissioner of Public Safety
American Samoa Government
P. O. Box 1086
Pago Pago, American Samoa 96799

Re: *E911 Phase II Report*

Dear Commissioner Te'o:

American Samoa Licenses, Inc., ("ASLI") is an FCC licensed PCS operator (d/b/a Blue Sky Communications) which provides wireless service in American Samoa. The FCC is requiring all PCS licensees to file a status report by November 9, 2000 of their plans to provide E911 Phase II service. In order to provide the FCC with meaningful information ASLI needs information concerning the status of the implementation of Enhanced 911 ("E911") Automatic Location Identification ("ALI") service in American Samoa, whether there is a Designated Public Safety Answering Point ("PSAP") in American Samoa, and what the PSAP's schedule is to become Phase I and Phase II compliant.

In many areas there is a central designated PSAP into which 911 calls are channeled. ASLI has learned that the Department of Public Safety ("Department") was responsible for 911 efforts in the Territory. ASLI has not been able to determine whether there is a "Designated PSAP"[1] or what plans there are for the provision of E911 service in American Samoa.

It is ASLI's understanding based upon informal inquiries that at this time there is one PSAP at the Police Department in Fagatogo. (We are sending a similar letter to find out what the Police Department's E911 plans are.) Further, we have not received a request for Phase I E911 service and it is our belief that such a request will not occur

[1] The "Designated PSAP" is defined as the "Public Safety Answering Point (PSAP) designated by the local or state entity that has the authority and responsibility to designate the PSAP to receive wireless 911 calls." 47 C.F.R. § 20.3.

An American Samoa Tokelau, LLC / American Samoa License, Inc. Company
Leufou Shopping Center, P. O. Box 478, Pago Pago, American Samoa 96799
Telephone: (684) 699-BSKY . Facsimile: (684) 699-6593
dlangkilde@blueskyas

within the foreseeable future. In fact, ASLI has previously had informal conversations where it has been told that there is currently no funding available for S57 signaling which is a precursor to providing *both* Phases I and II. ASLI is also not aware of any funds that have been allocated to purchase the necessary E911 system(s) for the PSAP.

Without your assistance, ASLI is concerned that it will not have sufficient information to meaningfully respond to the FCC's directive to file a E911 Phase II Report. Please provide me answers to the following by Friday, October 27, 2000:

- Is there a Designated PSAP? If so, please provide its name.
- Is your Department in charge of the planning and implementation of E911 Phase I and Phase II for the entire Territory of American Samoa or is the Police Department in Fagatogo responsible for planning and implementation?
- Will Phase I be offered or will there be a transition straight from 911 to Phase II?
- If Phase I will be offered, when will the landline network and the PSAP be capable of handling Phase I traffic? When do they plan to request Phase I service from ASLI?
- Has the PSAP received funds for modifications necessary to process Phase I traffic? If not, when does it plan to request such funds?
- If Phase II will be offered, when will the landline network and the PSAP be capable of handling Phase II traffic? When do they plan to request Phase II service from ASLI?
- Has the PSAP received funds for modifications necessary to process Phase II traffic? If not, when does it plan to request such funds?

In advance, thank you for your assistance in this matter. By discussing these matters ASLI and your Department will be able to work together to more expeditiously provide E911 services to the people of American Samoa.

Sincerely,

Fagafaga Daniel Langkilde
General Manager

An American Samoa Telecom, LLC / American Samoa Liberty, Inc. Company
Laufou Shopping Center, P. O. Box 478, Pago Pago, American Samoa 96799
Telephone: (684) 699-BSKY . Facsimile: (684) 699-6595
E-mail: dlangkilde@bluesky.as

ATTACHMENT II

Blue Sky
COMMUNICATIONS

VIA HAND DELIVERY

March 6, 2001

Honorable Te'o J. Fuavai
Commissioner of Public Safety
American Samoa Government
P. O. Box 1086
Pago Pago, American Samoa 96799

Re: *E911 Phase II Report*

Dear Commissioner Fuavai:

On October 24, 2000 American Samoa License, Inc., ("ASLI") an FCC licensed PCS system carrier providing wireless service on the island of American Samoa sent you a letter regarding the status of the implementation of Enhanced 911 ("E911") Automatic Location Identification ("ALI") service on American Samoa, a copy of which is attached. Specifically, we requested information as to whether there is a Designated Public Safety Answering Point ("PSAP") on American Samoa, and what the PSAP's schedule is to become Phase I and Phase II compliant. We had hoped to incorporate this information into our E911 Status Report ("Report"), which the FCC required all carriers to file by November 9, 2000. Unfortunately, we had not received a response from you by the time we had to file our report with the FCC on November 9, 2000. Thus, we were only able to provide the FCC with a limited amount of information regarding the implementation of E911, including whether a PSAP had been designated in American Samoa.

We stated in our Report that we would continue to work with the Public Safety officials in American Samoa to implement E911 from ASLI's wireless network and keep the FCC apprised of our efforts. Thus, we must again request responses to the following information so that we may include in our update to the FCC salient facts concerning the status of E911 in American Samoa.

As we would like to file the update with the FCC as soon as possible, please provide answers to the following by Friday, March 9, 2001:

P.O. Box 478, Pago Pago, American Samoa 96799
Telephone:(684) 699-BSKY , Facsimile: (684) 699-6593

- Is there a Designated PSAP? If so, please provide its name.

- Is your Department in charge of the planning and implementation of E911 Phase I and Phase II or is the Police Department of Fagatogo responsible for the planning and implementation of E911 Phase I and Phase II across the entire Territory of American Samoa?

- Will Phase I be offered or will there be a transition straight from 911 to Phase II?

- If Phase I will be offered, when will the landline network and the PSAP be capable of handling Phase I traffic? When do they plan to request Phase II service from ASLI?

- Has the PSAP received funds for modifications necessary to process Phase I traffic? If not, when does it plan to request such funds?

- If Phase II will be offered, when will the landline network and the PSAP be capable of handling Phase II traffic? When do they plan to request Phase II service from ASLI?

- Has the PSAP received funds for modifications necessary to process Phase II traffic? If not, when does it plan to request such funds?

In advance, thank you for your assistance in this matter. By discussing these matters ASLI and your Department will be able to work together to more expeditiously provide E911 services from ASLI's wireless network to the people of American Samoa.

Sincerely,

Larry E. Gattis
Vice President
American Samoa License, Inc.

ATTACHMENT III

DEPARTMENT OF PUBLIC SAFETY
AMERICAN SAMOA GOVERNMENT
P.O. Box 1086, Pago Pago, American Samoa 96799
Telephone: (684) 633-1111 • Fax No.: (684) 633-7296

HON. TAUESE P.F. SUNIA
Governor
HON. TOGIOLA T.A. TULAFONO
Lt. Governor

Office of the Commissioner

TE'O J. FUAVAI
Commissioner

Serial: 55-2001

March 8, 2001

received 3/9/01

Mr. Larry E. Gattis
Vice President
American Samoa Licenses, Inc.
P.O. Box 478
Pago Pago, American Samoa 96799

Dear Mr. Gattis:

Thank you for your letter of inquiry into the Enhanced 911 dated March 6, 2001. I apologize for not having responded to your earlier inquiries.

You know that we currently have a "911" system that is very old as compared the current E911 in the states. The reason is that the equipment to modernize our 911 is expensive and that it would take an excess of $250,000 to probable take us through Phase I and II that you mentioned.

To answer your questions:

(1) Yes. The Department of Public Safety is the designated PSA or Public Safety Answering Point for American Samoa. We currently use a phone system.

(2) Yes. DPS, headquartered at the Police Headquarters Building in Fagatogo, is responsible for planning and implementing the E911 Phases I and II for American Samoa.

(3) Plans have not been made to go beyond our current landline network because sources of funding have not yet been identified. When funds are available, I'm not sure that ASLI or ASTCA will bew asked to implement these advancements.

To answer the rest of your questions, it is not clear at this time where the funds will be coming from. I will be requesting this month two sources for the funds.

I will keep you posted on any future development. I appreciate your interest in advancing our response capabilities to emergencies.

Sincerely yours,

TE'O J. FUAVAI
Commissioner

cc: Fagafaga Daniel Langkilde - General Manager ASLI

ATTACHMENT IV

STAMP AND RETURN

RECEIVED

OCT 16 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the 911 Act	)	WT Docket No. 00-110
	)	
The Use of N11 Codes and Other Abbreviated Dialing Arrangements	)	CC Docket No. 92-105

To: Federal Communications Commission

COMMENTS OF AMERICAN SAMOA LICENSE, INC. IN WT DOCKET NO. 00-110

American Samoa License, Inc. ("ASLI"), by its attorney, hereby submits these comments in response to the Federal Communications Commission's ("FCC" or "Commission") *Notice of Proposed Rulemaking*, FCC 00-327 (rel. Aug. 29, 2000) ("*Notice*")[1] seeking comment on the furtherance of emergency communications services, including wireless communications. ASLI is a corporation formed under the laws of the U.S. Territory of American Samoa for the purpose of operating a personal communications service ("PCS") system in the American Samoa Major Trading Area ("MTA"), consisting of the entirety of American Samoa. As a wireless carrier and a provider of 911 emergency services, ASLI has an interest in this proceeding.

INTRODUCTION

The *Notice* seeks comment on proposed FCC efforts to implement the Wireless Communications and Public Safety Act of 1999 ("911 Act").[2] Among other things, the 911 Act directs the

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[1]Concurrently with the release of the *Notice*, the Commission released *Use of N11 Codes and Other Abbreviated Dialing Arrangements*, FCC 00-327, *Fourth Report and Order and Third Notice of Proposed Rulemaking* (rel. Aug. 29, 2000) ("*Fourth R&O*" or "*Third NPRM*").

[2]Pub. L. No. 106-81, 113 Stat. 1286 (1999), amending 47 U.S.C. §§ 222, 251.

Commission to "encourage and support" the states, territories and other U.S. possessions in developing comprehensive emergency communications so that all jurisdictions offer seamless networks for prompt emergency service.[3] Although the 911 Act requires the Commission to "consult and cooperate with State and local officials," the Commission is not authorized by the 911 Act to "impose obligations or costs on any person."[4] Accordingly, the Commission seeks comment on how to facilitate efforts to deploy comprehensive emergency communications systems.[5]

ASLI supports Commission efforts, as discussed herein, to work with state and local officials across the United States and its possessions, including the Territory of American Samoa, to facilitate the provisioning of a comprehensive 911 system, as long as they do not impose costs or obligations. Such efforts are particularly necessary given the current construct of the wireless 911 rules governing "basic" and "enhanced" 911 ("E911") services by certain wireless carriers, including broadband PCS licensees like ASLI. Specifically, although carriers play an important role in providing E911 service to the public, E911 service will remain unattainable until there is a "designated" Public Safety Answering Point ("PSAP")[6] established by a state or locality, and that designated PSAP has the ability to support and process E911 calls. Until the Commission is able to facilitate this, the policies the FCC is trying to further in both the 911 Act and its rules cannot be either fully or expeditiously realized.

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[3] *See* 911 Act at Section 3(b).

[4] *Id.*

[5] *See Notice* at ¶ 24.

[6] The "designated PSAP" is defined as the "Public Safety Answering Point (PSAP) designated by the local or state entity that has the authority and responsibility to designate the PSAP to receive wireless 911 calls." 47 C.F.R. § 20.3.

DISCUSSION

Initially, under the Commission's rules a covered wireless carrier must provide basic 911 service, meaning it must transmit all wireless 911 calls without further location information to a PSAP.[7] The Commission has clarified that "the designation of the PSAP that should receive wireless 911 calls is a matter for State or local authorities," but "'until the relevant State or local governmental entities develop a routing plan for wireless 911 calls within their jurisdiction . . . covered carriers can comply with our rules by continuing to route 911 calls to their incumbent wireless PSAPs.'"[8] To the best of ASLI's knowledge, there is a single local incumbent PSAP on-island, the Police Department in the central business district of Fagatogo. For emergency calls, American Samoans utilizing wireline telephones can choose to either dial 911 and have their calls routed to the Police Dispatcher in Fagatogo, who will then contact the appropriate emergency police, fire, medical or other personnel, or they can directly dial (via a seven-digit telephone number) a particular emergency service provider. ASLI provides wireless callers with 911 dialing so that they can notify the PSAP of their need for emergency services. When ASLI receives a 911 call over its network, that call is translated into a seven-digit number and transmitted to the Police Dispatcher in Fagatogo.

The next generation of emergency services are E911 services, which will be implemented in two distinct phases. In Phase I, wireless carriers must provide both the telephone number of the 911 caller and the location of the cell site or base station receiving the call to the "designated" PSAP.[9] In Phase II, carriers must provide to the designated PSAP the location of all 911 calls by

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[7] 47 C.F.R. § 20.18(b).

[8] *Compatibility with Enhanced 911 Emergency Calling Systems, Declaratory Ruling*, 14 F.C.C.R. 1969, 1978-79 (1998) (quoting *Compatibility with Enhanced 911 Emergency Calling Systems, Memorandum Opinion and Order*, 12 F.C.C.R. 22665, 22713 (1997)).

[9] 47 C.F.R. § 20.18(d).

longitude and latitude.[10] These requirements for enhanced 911 services are applicable, however, only if the administrator of the designated PSAP has requested the services and is capable of receiving and utilizing the data elements associated with the service, and a mechanism for cost recovery is in place.[11] ASLI has not received a request for Phase I E911 from the local incumbent PSAP, and ASLI is not certain that there is a "designated PSAP" in American Samoa as defined in the Commission's rules. Thus, in American Samoa and other similarly-situated areas of the United States, the technology may exist for wireless service providers to provide E911 service, but there is no PSAP currently able to process and utilize the E911 calls that would be sent from wireless carriers. While the FCC has consistently pressed carriers to implement E911 services as early as is technologically feasible, E911 will not become a reality until states and localities budget, construct and operate PSAP facilities capable of handling E911 calls.

Thus, in American Samoa, and elsewhere where a designated PSAP has not been selected or has not yet requested the provisioning of E911 services, further action is required by the state and local governments to make wireless E911 a reality. For this reason, ASLI recognizes the possible benefits to be attained by Commission efforts to encourage and support the states, territories and other U.S. possessions in developing comprehensive emergency communications system, so long as these efforts are carefully tailored and do not impose costs or obligations. For example, the Commission has proposed several information-sharing actions, such as the establishment of focus groups or "round table" discussions, which it believes would help facilitate this process without imposing obligations or costs.[12]

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[10] 47 C.F.R. § 20.18(e).
[11] 47 C.F.R. § 20.18(j).
[12] *See Notice* at ¶¶ 25-27.

Any forums or round table discussions should be designed to include all interested participants, including state and local government representatives, carriers, and emergency services representatives. The Commission's efforts to establish a clearinghouse of information could be particularly worthwhile to smaller states and territories without the same access to resources as their larger counterparts, by allowing them to benefit from the experiences gained by those jurisdictions at the fore of this area, and by learning how to avoid some of the pitfalls they encountered. Finally, any "model" state plans that are developed must be just that: model plans, not mandatory ones. The Commission must recognize that each jurisdiction is unique — American Samoa being a prime example — and there can be no "one size fits all" state plan, only general guidelines.

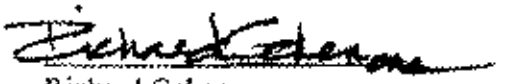
As 911 service is the foundation upon which E911 services will be built, ASLI is hopeful that the information-sharing actions initiated by the Commission will have as one of their goals the establishment of a neutral forum for interested parties to discuss transition issues presented by E911. Wireless carriers are already subject to Phase I and Phase II rules, however these rules will not translate into E911 services being provided to the public until such time as PSAPs are capable of handling E911 calls.

CONCLUSION

ASLI believes that the FCC can perform a valuable function by serving as a forum for information sharing and that these efforts could expedite the provision of emergency services throughout the United States. For the foregoing reasons, the Commission should adopt the initiatives described herein.

Respectfully submitted,

AMERICAN SAMOA LICENSE, INC.

By: 

Richard Cohen
General Counsel
100 North Point Center East
Suite 320
Alpharetta, GA 30022
(678) 366-0104

Its Attorney

October 16, 2000

DECLARATION

I, Rich Cohen, as General Counsel of American Samoa License, Inc., hereby certify that to the best of my knowledge and belief the information contained herein is complete and accurate.

Signed: _____ **Date:** July 30, 2001